Filed 8/1/19 LT Motorwerks, Inc. v. Cheung CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

LT MOTORWERKS, INC., Plaintiff, Cross-defendant and Appellant, v. KINGSANG CHEUNG, Defendant, Cross-complainant and Respondent.	B290274 (Los Angeles County Super. Ct. No. KC067866)

APPEAL from a judgment of the Superior Court of Los Angeles County. Robert A. Dukes, Judge. Affirmed.

Buccat Law Group and Jason James Buccat for Plaintiff, Cross-defendant and Appellant.

West Themis Law, Sally S. Chan and Karen K. Tso for Defendant, Cross-complainant and Respondent.

SUMMARY

An automotive repair dealer (LT Motorwerks, Inc.) sued a customer to recover thousands of dollars for car repairs that the repair dealer did not perform, and that the customer did not authorize it to perform. Not surprisingly, in the end the trial court entered judgment for the customer on his cross-complaint for fraud, conversion, trespass to chattels, violation of the Automotive Repair Act, and violation of the Consumer Legal Remedies Act (CLRA), awarding $97,050 in compensatory damages; $50,000 in punitive damages (an amount the court approved after the parties stipulated to it); and $108,555.80 in attorney fees and costs under the CLRA.

LT Motorwerks (LTM or cross-defendant) asserts several claims of error. Principal among them is the claim that the Automotive Repair Act's requirement that "[n]o work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer" (Bus. & Prof. Code, § 9884.9, subd. (a)) does not apply to it. This is (LTM says) because the customer authorized another automotive repair dealer (R's Tuning) to perform the repairs, and R's Tuning (unbeknownst to the customer) authorized LTM to perform the repairs, so LTM was a "subcontractor" who needed no authorization from the customer.

That is not how it works. As the trial court aptly stated, rejecting the claim that LTM had no responsibility to determine whether the customer consented to having work performed by someone other than R's Tuning, "You're kidding me." None of the other claims of error has any merit either. We affirm the judgment.

FACTS

One would not know many of the pertinent facts in this case by reading the opening brief. This is what happened.

In August 2014, cross-complainant Kingsang Cheung's 2013 Porsche was seriously damaged in an accident a few days after he purchased it (for $75,000). The Porsche was towed to an automotive repair dealer, R's Tuning. On September 1 and November 11, 2014, cross-complainant's insurer issued checks to him, totaling more than $27,000, for the repairs, and cross-complainant duly endorsed the checks to R's Tuning.

R's Tuning did not perform the repairs. Instead, in September 2014, Ricky Guan (its owner) asked Long Tran, owner of cross-defendant LTM, to repair the car. Mr. Tran agreed and had the car towed to his shop in El Monte. In November 2014, R's Tuning informed LTM that LTM should contact the owner (Mr. Cheung), but LTM did not do so. LTM did a small amount of work on the car and ordered parts for it, but never completed the repairs.

Meanwhile Mr. Cheung, then a high school student, knew nothing about the transfer of the Porsche to LTM for the repairs. He kept calling R's Tuning to inquire, and was told the car was not yet ready. Finally, in December 2014 or January 2015, he went to R's Tuning, apparently at Mr. Guan's request, and found out the Porsche was at the LTM shop in El Monte.

The two of them (Mr. Cheung and R Tuning's Mr. Guan) then went to El Monte to retrieve the car. Mr. Cheung never saw the vehicle there, and did not speak with anyone at LTM; apparently, Mr. Guan did all the talking. Mr. Guan told LTM that Mr. Cheung had already paid for the repairs. LTM would not release the car, saying it "had already purchased parts for the

car," and "wanted the money for that as well as for the car being stored there," at a storage fee of $90 per day. This was a hefty sum, as the car had been there for three months. Mr. Cheung suggested to Mr. Guan that he would pay for the parts but not the storage, and Mr. Guan conveyed that offer to LTM, but LTM refused.

Mr. Guan called the police, and when the police came, Mr. Cheung "told the whole story to the officer," but the officer's response was that he or she "did not have the authority to handle" the matter.

In late 2014 or early 2015, Mr. Cheung filed a complaint about LTM with the Bureau of Automotive Repair. The Bureau's "Station Inspection Report" dated January 29, 2015, states that "[a]t this time there is no legal authorization" for LTM to do the repairs. In response to this report, LTM obtained a written statement from an employee of R's Tuning, dated January 29, 2015, stating that on September 26, 2014, he (the R's Tuning employee) had given authorization to LTM to repair the Porsche.

LTM did not perform the repairs, except for a small amount of work on the suspension so the car could be moved around the shop. Then, despite not having done the repairs, LTM filed an application with the Department of Motor Vehicles for authorization to hold a lien sale, stating the customer (Mr. Cheung) owed it $28,429.75 for completed repairs, plus $2,790 in storage fees. Mr. Cheung (through his uncle, Lik Sing Tam, who acted for him while he was away in Hong Kong) objected to the lien sale.

Then, in August 2015, LTM sued Mr. Tam and Mr. Cheung for declaratory relief, seeking $27,419.01 for repairs it did not do,

and storage fees of $16,200. As already mentioned, Mr. Cheung filed a cross-complaint.[1]

Both parties filed motions for summary judgment or summary adjudication of Mr. Cheung's cross-complaint. Mr. Cheung sought summary adjudication of his claims for conversion, trespass to chattels, violation of Business and Professions Code section 9884.9, and violation of the CLRA (Civ. Code, § 1770). LTM sought summary adjudication on all of Mr. Cheung's causes of action.

The trial court denied LTM's motions for summary adjudication, and granted summary adjudication to Mr. Cheung as requested, except as to the alleged violation of the CLRA.

The case went to trial on cross-complainant's causes of action for fraud, violation of the CLRA and negligence. The court heard testimony from Mr. Cheung, Daniel Calef (an expert in automotive diagnostics and repair), Mr. Tran (LTM's owner), and several others.

After hearing the evidence and closing arguments, the trial court began its ruling with credibility determinations, stating: "The court does find the testimony of the cross-complainant, Kingsang Cheung, his expert Mr. Calef, and Mr. Tam (Mr. Cheung's uncle) to be extremely credible. (Mr. Calef testified, among other things, that his examination of the Porsche after it was returned to Mr. Cheung (by court order) showed the repairs, except for about $3,500 worth, had never been done. He also testified that storage fees do not begin to accrue until after repairs are completed.) Further, the court stated that it "does not

---

[1] Mr. Tam was also a cross-complainant, but his cross-complaint was dismissed without prejudice on April 3, 2017.

find the testimony on behalf of the cross-defendant to be credible at all."

The court described its findings in detail. In addition to facts already described, pertinent points included these.

R's Tuning gave the car to LTM (the two "had a prior working relationship") without the knowledge or authorization of cross-complainant. LTM could have contacted Mr. Cheung directly, but "they chose to never contact the cross-complainant or seek authorization for the work." While LTM had custody of the Porsche, it was further damaged ("dings and scratches described as shop rash"). The court "accept[ed] the testimony of the expert, Mr. Calef, that reasonable value for the repair of that damage is $7,500."

"[A]s of at least February 1, 2015, the cross-defendant was aware that the [Porsche] in its possession was not authorized for repair, and . . . during that time, made misrepresentations to the cross-complainant through [Mr. Guan, R Tuning's owner] and other people regarding the nature and basis that the cross-defendant was using to refuse to release the vehicle . . . . [¶] Among those were the representations that . . . total repairs had been made to the vehicle, and that [cross-defendant] was entitled, in addition to the repairs, to storage fees. These representations were false. . . . [¶] . . . [¶] Those were wrong in law, and . . . were done intentionally so they could hold the vehicle hostage to obtain further fees. This was done intentionally and knowingly, and the court finds by clear and convincing proof there were fraudulent misrepresentations with the intent to harm the cross-complainant in not releasing the vehicle."

Further, the court found that "throughout these proceedings, from its inception," LTM continued to make these

misrepresentations, including declarations under penalty of perjury, that the repairs had been made, and "[t]he evidence overwhelmingly shows that's not the case."

The court found loss of use damages (February 1, 2015, to September 20, 2016, when the car was finally returned under court order), accepting Mr. Calef's testimony of a fair rental value of $150 per day.

The court found LTM violated the CLRA (Civ. Code, § 1770, subd. (a)(14)&(16)),[2] entitling cross-complainant to attorney fees and costs (§ 1780, subd. (e)), and the fraud findings entitled cross-complainant to punitive damages.

After a recess, the parties reported they had agreed to a "$50,000 punitive damage number." The court indicated that was "appropriate under this case" and, based on the parties' stipulation, awarded "$50,000 in punitive damages under the complaint both for the fraud and the violations of the CLRA cause of action."[3]

---

[2] Civil Code section 1770 identifies and declares unlawful various "unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or that results in the sale or lease of goods or services to any consumer," including "[r]epresenting that a transaction confers or involves rights, remedies, or obligations that it does not have or involve, or that are prohibited by law" (*id.*, subd. (a)(14)), and "[r]epresenting that the subject of a transaction has been supplied in accordance with a previous representation when it has not" (*id.*, subd. (a)(16)).

[3] The CLRA permits a consumer to recover punitive damages for acts "declared to be unlawful by Section 1770." (Civ. Code, § 1780, subd. (a)(4).)

Judgment was entered as described at the outset, and cross-defendant appealed.

DISCUSSION

1. The Automotive Repair Act Violation

Under the Automotive Repair Act (Bus. & Prof. Code, § 9880 et seq.), an automotive repair dealer is "a person who, for compensation, engages in the business of repairing or diagnosing malfunctions of motor vehicles." (§ 9880.1, subd. (a).) An automotive repair dealer must give the customer "a written estimated price for labor and parts necessary for a specific job," and "[n]o work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer." (§ 9884.9, subd. (a) (section 9884.9).)

Section 9884.9 also requires an automotive repair dealer to include with its written estimated price "a statement of any automotive repair service that, if required to be done, will be done by someone other than the dealer or his or her employees. No service shall be done by other than the dealer or his or her employees without the consent of the customer, unless the customer cannot reasonably be notified. The dealer shall be responsible, in any case, for any service in the same manner as if the dealer or his or her employees had done the service." (*Id.*, subd. (b).)

Cross-defendant contends section 9884.9 does not apply to it, because it was a "subcontractor" and not "an original automotive repair dealer." Under this theory, R's Tuning is the bad guy and LTM is "a fellow victim" with Mr. Cheung. LTM "despises R's Tuning's conduct," but should not be "the scapegoat for [R's Tuning's] wrongdoings." LTM contends it is "as innocent as the customer."

The trial court obviously did not think so, and neither do we. Plainly, R's Tuning violated its duties under the Automotive Repair Act, and remained responsible for any repair service done on the car, no matter who did it. The statute says so. But R Tuning's conduct is not the question before us. We see no basis under which we may conclude that only the "initial" automotive repair dealer has a duty to comply with the requirements stated in section 9884.9.

LTM tells us "[t]he legislature did not intend to require subcontractors to seek out the original customer/owner before engaging in repairs." No authority is cited for this contention, which is contrary to the purpose of a statute that was "designed to protect consumers against unscrupulous automotive repair dealers." (*Zhadan v. Downtown L.A. Motors* (1976) 66 Cal.App.3d 481, 497.) As the trial court pointed out, when R's Tuning asked LTM to repair the car, all LTM had to do was to ask R's Tuning to "show me where we're authorized under your contract to do these repairs. . . . If [LTM] accepts [the car] without showing that authorization, then that's the risk [LTM] bears. It is not the customer's responsibility. Why would you put the onus on the customer who had no knowledge this was happening?" And, "[LTM] and [R's Tuning] are the two people that are in business together. They're the ones that have to absorb that risk. The customer is innocent in this."

We pause to note that in *Vasquez v. SOLO 1 Kustoms, Inc.* (2018) 27 Cal.App.5th 84, 93, we held there is no private cause of action for violation of section 9884.9. (After oral argument, we granted LTM's request for leave to cite *Vasquez,* which LTM did not rely on in its appellate briefs.) The *Vasquez* holding does not mean, of course, that LTM's violation of the statute has no

bearing on the case; it simply means Mr. Cheung could not have recovered damages if he had sued alleging *only* a section 9884.9 violation. As *Vasquez* stated, a customer may file a civil action for conversion, trespass to chattels, and "other common law and statutory causes of action arising out of the violation." (*Vasquez,* at p. 94.) That was the case here.

In short, LTM's contention it is not subject to section 9884.9 is entirely without merit. No authority suggests otherwise. Because cross-defendant had no authorization to repair or retain the vehicle, there was likewise no error in the trial court's summary adjudication in Mr. Cheung's favor on his causes of action for conversion and trespass to chattels. LTM now contends Mr. Cheung "impliedly assent[ed] to or ratifie[d]" LTM's repairing the Porsche, and refers to parts of Mr. Cheung's trial testimony (without citing to the transcript). But no trial testimony is relevant; the question is whether there were disputed fact issues preventing summary adjudication of the conversion and trespass to chattel claims. LTM has identified none.[4]

2. The Fraud Findings

LTM contends the trial court erred in finding it liable for fraud because there was no evidence of a knowingly false representation, no intent to defraud, and no justifiable reliance by Mr. Cheung. There is no merit to these contentions.

---

[4] LTM also argues at some length that R's Tuning was Mr. Cheung's agent, and also that LTM was R's Tuning's agent. It is hard to know what to make of this, as the arguments are virtually incomprehensible, and LTM does not explain how either point is relevant. In addition, there is not a single citation to the record on these points. We do not consider the argument further.

First, LTM points out there was no direct communication between LTM and Mr. Cheung, so "there could not have been a misrepresentation to begin with." LTM cites no authority for this assertion, and the trial court expressly found otherwise: that LTM "made misrepresentations to the cross-complainant through [Mr. Guan, R Tuning's owner] and other people," including that "total repairs had been made" when they had not been made and that storage fees were due when they were not due.

Second, LTM says the evidence "overwhelmingly support[ed] the fact that LTM honestly believed that it had authority to retain the vehicle," so there was "no intent to defraud." For this assertion, LTM cites Mr. Tran's testimony, failing to acknowledge that the trial court expressly concluded that Mr. Tran's testimony was not credible "at all." Indeed, Mr. Tran admitted at trial that he filed a lien demanding $28,000 for repairs and that he did not do those repairs.

Third, LTM contends there was no evidence to support Mr. Cheung's reliance on LTM's misrepresentations. Again, the trial court found otherwise, concluding Mr. Cheung believed he could not recover the Porsche without meeting LTM's demands for payment: "The misrepresentations did result in reliance by the cross-complainant to his detriment throughout this matter. He was young and he was inexperienced and based upon the representations and his apparent belief, the court finds his belief that the cross-defendant was entitled to the total amount of repairs being claimed by the [cross-defendant] and . . . the storage of $90 a day, he was unable to further obtain his car until finally forced by the cross-defendant after the filing of the lien sale, and those are all directly attributable to those misrepresentation[s] and his reliance thereof."

3. Damages

LTM challenges the award of $7,500 for the additional damage LTM caused to the Porsche while it was in LTM's custody. The basis for this challenge is that Mr. Cheung no longer owned the Porsche at the time of trial. We do not see why this matters, and LTM cites no authority to support the point.

Next, LTM challenges the court's award of loss of use damages for the period between February 1, 2015 and September 20, 2016. In addition to asserting Mr. Cheung "no longer had an interest" in the car at the time of trial, LTM contends Mr. Cheung "did not present any evidence that he needed the Porsche," and he did not need it because he bought another luxury car in December 2014. These are not proper bases for reversing the trial court's award of damages for loss of use.

LTM cites *Metz v. Soares* (2006) 142 Cal.App.4th 1250, where the court held that "[o]ne who does not use a car is not entitled to damages for loss of use." (*Id.* at p. 1252.) *Metz* has no application here. In *Metz*, the plaintiff collected classic cars, and his 1971 Jaguar XKE was ruined while in the defendant's possession for repair. The plaintiff accepted compensation from the defendant's insurer, and then decided the compensation was inadequate and sued the defendant for damages for loss of use of the car. (*Id.* at p. 1251.) But the plaintiff had taken the car out of service five years before he brought it to the defendant's shop, and he let the defendant keep the car for over four years (during which the car was registered as nonoperational) before it was damaged. (*Id.* at p. 1257.) Under these circumstances, "plaintiff was not deprived of the use of his car by any act of defendant," and "there was no evidence on which any damages for loss of use

could have been calculated." (*Ibid.*) That is plainly not the case here.

Finally, LTM contends the trial court should have reduced the damages awarded by $30,000, because Mr. Cheung testified he settled his claims against R's Tuning for $30,000, and otherwise Mr. Cheung would have a "double recovery." LTM fails to tell us the trial court rejected this claim, pointing out the R's Tuning settlement "was a return of the monies that are to be used for the repair of the vehicle," and that none of the damages awarded against LTM were being awarded for the repair of the vehicle. (The compensatory damages were for loss of use of the vehicle.) There was no "double recovery."

DISPOSITION

The judgment is affirmed. Cross-complainant shall recover his costs on appeal.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

WILEY, J.